

1 JUDGE CHACHKIN: Go ahead.

2 MR. GARDNER: I'm sorry. If there would have been
3 anything that I saw in the 307 or the Exhibit 1 that I had any
4 question about or felt was incorrect or in any way was not a
5 complete statement of what that situation was talking about, I
6 would have immediately talked with David Gardner on it.

7 BY MR. EMMONS:

8 Q And it would have been easy to do that. He was
9 right in the same building.

10 A That's correct.

11 Q Now did you review any files or documents in
12 connection with these applications prior to signing them?

13 A No, I don't believe I did. Because as I say, I had
14 firsthand knowledge of many of the items that are stated here.
15 And the ones that I didn't have I had confidence in my people
16 that they were carrying those out.

17 Q Now you, you were the person who signed these four
18 applications.

19 A Yes.

20 Q Did, did -- at the time you signed them, December
21 1991, did Raystay have any procedures in place for the signer
22 of an FCC application to verify the accuracy of statements
23 being made in the application?

24 A The procedures that we had in place were to have as
25 many people that were knowledgeable on it see it before it

1 | came to me so that we had everything as correct as possible.

2 | Q But there was no procedure whereby the person
3 | signing would be required to verify with other persons the
4 | statements made in that.

5 | A No.

6 | Q And you signed these four applications on
7 | December 18, 1991?

8 | A Yes.

9 | Q Now would you turn to page 3 of, of TBF Exhibit 245.

10 | A I have it.

11 | Q That -- this is the first page of Exhibit 1 of the
12 | application. And look, focus on the second paragraph of the
13 | page which reads, "Initially it must" --

14 | JUDGE CHACHKIN: Well, we don't have to read it.
15 | Just have him look at it.

16 | BY MR. EMMONS:

17 | Q Mr. Gardner, would you read to yourself the second
18 | paragraph of page 3.

19 | A Yes.

20 | Q You were stressing there that Raystay had built
21 | TV40, were you not?

22 | A Yes.

23 | Q As opposed to having bought TV40.

24 | A That's correct.

25 | Q And why were you making that point?

1 MR. SCHAUBLE: Objection, relevance.

2 MR. EMMONS: Your Honor, this whole issue goes to
3 the state of mind of the applicant.

4 JUDGE CHACHKIN: I'll overrule the objection.

5 MR. GARDNER: The statement was correct. I did not
6 look into the reason why the statement was there. As I said,
7 I rely on Mr. Cohen to determine what we need to put in here.
8 And we supply the information that he requires.

9 BY MR. EMMONS:

10 Q Well, you adopted this statement as your own though
11 when you signed the application, didn't you?

12 A That's correct.

13 Q And did you not give thought to what the statement
14 was saying or what it meant?

15 A I have no idea why it's in there. I just know that
16 it's a correct statement. That's all I'm saying when I sign
17 it.

18 Q Isn't, isn't it the case, Mr. Gardner, that, that
19 you meant to convey the impression by that statement that
20 Raystay was in fact going to build these low-power stations?

21 A I don't read that there.

22 Q You, you -- weren't you, weren't you meaning to
23 assure the Commission that because Raystay had already built
24 one low-power station it could and would build the other low-
25 power stations?

1 A Well, I think that's a correct statement, yes.

2 Q That was the impression that you were trying to
3 convey.

4 A I have no idea why that statement is in there.

5 Q Now would you turn -- not turn. I'm sorry. Again
6 on the same page, the third paragraph, the, the third sentence
7 of the third paragraph referring to lease negotiations, would
8 you read that to yourself please?

9 A Yes.

10 Q Now when you reviewed that part of Exhibit 1, who
11 did you understand was representing Raystay or had represented
12 Raystay in lease negotiations with the site owners that were
13 being referred to in that sentence?

14 A David Gardner.

15 Q Now had David Gardner ever told you that he had
16 entered into lease negotiations with representatives of the
17 site owners?

18 A I don't recall an exact conversation. But he was
19 responsible for obtaining the sites along with the site
20 engineer when we made the initial application. And that was
21 his job responsibility.

22 Q Well, what did you think he was, was being referred
23 to here then with the reference to lease negotiations? You
24 told us that you, you thought that David Gardner was
25 representing, had represented Raystay in these negotiations.

1 When did you think he, negotiations had occurred?

2 A Well, David Gardner worked with Mr. Cohen to put
3 this Exhibit 1 together for us. And David Gardner's job
4 responsibility was to conduct lease negotiations for the
5 company. And this was obviously an area his, of his job
6 responsibility. He had worked with Mr. Cohen to make the
7 statement. I accepted it as it's stated.

8 Q Well, did you know when the lease negotiations
9 referred to there had commenced?

10 A I didn't ask him, no.

11 Q Did you know who the representatives of the site
12 owners were that are referred to in that sentence?

13 A No.

14 Q Did you know how many negotiating sessions there had
15 been?

16 A No.

17 Q Did you know what points were being negotiated?

18 A No.

19 Q Did you know on what points agreement had been
20 reached?

21 A No.

22 Q Did you know what points were still in dispute?

23 A No.

24 Q Did you know whether further negotiations if any
25 were scheduled?

1 A No.

2 Q So you did not personally seek to ascertain the
3 truth of that statement when you read it prior to signing --

4 A David Gardner had made the statement in conjunction
5 with Mr. Cohen. And there was no reason for me to have any,
6 to not believe what he said.

7 Q So you made no effort to verify it yourself.

8 A No.

9 Q Now do you have before you a copy of the orange
10 volume which is Glendale Exhibit 208 and 209?

11 MR. SCHAUBLE: Your Honor, may I help --

12 JUDGE CHACHKIN: Yes.

13 MR. SCHAUBLE: Let the record reflect that the
14 witness has before him Glendale Exhibit 208.

15 BY MR. EMMONS:

16 Q Would you turn to page 4 of Glendale Exhibit 208?

17 A Yes.

18 Q And it carries over to the top of page 5. But down
19 at the bottom of page 4, do you see that in your direct
20 written testimony you are referring to the, the sentence in
21 Exhibit 1 regarding lease negotiations?

22 A Yes.

23 Q And do you see that at the top of page 5 you say
24 that, "The statement was reasonable to me because it was
25 consistent with David Gardner's job responsibility. I also

1 | knew that Mr. Sandifer had reviewed the exhibit, and he had
2 | passed the application to me without raising any questions."
3 | Do you see that?

4 | A Yes.

5 | Q Now are you saying there that, that part of the
6 | reason that you believed Exhibit 1 to be accurate insofar as
7 | it referred to the lease negotiations was that Mr. Sandifer
8 | had read the application, had read Exhibit 1 and passed it on
9 | to you without raising any questions?

10 | A No. I say that I knew that he had reviewed the
11 | exhibit. How he reviewed it I don't know. But certainly
12 | having him review the exhibit before it came to me gave me a
13 | lot of comfort. And having David Gardner work with Mr. Cohen
14 | in preparation of it gave me a lot of comfort. I had no
15 | reason to disbelieve that David Gardner had not exercised his
16 | job responsibility. It was clearly defined. It was written.
17 | He exercised that responsibility every day in everything that
18 | he did. And it just never occurred to me that he wouldn't
19 | have done what he said he did here.

20 | Q Well, in fact, Mr. Gardner, it is the case, is it
21 | not, that it was only after your deposition in this proceeding
22 | last September that you learned for the first time that Lee
23 | Sandifer had reviewed Exhibit 1 in December 1991 prior to your
24 | reviewing it?

25 | A No, I don't think that's the case. I -- in

1 reviewing my deposition, I noticed that I hadn't stated that
2 Lee Sandifer had reviewed the extension application. And I
3 think it must have just slipped my mind there. But I think I
4 knew at the time that Lee Sandifer had reviewed it.

5 Q Well --

6 A I just didn't state it in my deposition.

7 Q Well, you could see that in your deposition you said
8 that at the time you reviewed Exhibit 1 in December 1991 you
9 had no knowledge that anyone other than David Gardner within
10 the Raystay Company had reviewed it?

11 A I -- forgive me. I think I said that David Gardner
12 gave it to me. And I think the correct wording should have
13 been David Gardner apparently gave it to Lee Sandifer who gave
14 it to me.

15 Q Well, you also said in your deposition --

16 MR. SCHAUBLE: Your Honor, can the witness be -- can
17 we be referred to the pertinent portions of the deposition?

18 MR. EMMONS: Page 156.

19 (Pause.)

20 BY MR. EMMONS:

21 Q Do you have page 156, Mr. Gardner?

22 A Yes, I have 156.

23 Q Would you look starting on line page 13? "When you
24 signed the applications, to whom did you give them?" Answer,
25 "I would have returned this to David. He says return to me

1 for filing." Question, "Do you know who else read these
2 applications before they were filed?" Answer, "I had no
3 knowledge of that."

4 A Before they were filed. That would have been after
5 I signed it.

6 Q You had no knowledge of who else besides David
7 Gardner had read these applications before they were filed.

8 MR. SCHAUBLE: I think the witness has given his
9 explanation, Your Honor.

10 JUDGE CHACHKIN: Well, it's certainly different than
11 read it before they were signed. That's what we're dealing
12 with now. That wasn't the question you asked at the
13 deposition.

14 BY MR. EMMONS:

15 Q Oh, you construe that question to be a different
16 question? In other words, you construe the question in the
17 deposition to mean who might have read them --

18 A After I signed them.

19 Q After you signed but before they were filed.

20 A Yes.

21 Q You did not construe the question to mean reviewed
22 at any time by any person before they were filed.

23 A No, I, I guess I'm confused on this. I thought you
24 meant after I had signed them.

25 Q All right. I, I understand your -- thank you. Now

1 back to TBF Exhibit 245.

2 A All right.

3 Q On page 3 in the third paragraph, last sentence
4 referring to representative of Raystay and an engineer, would
5 you read that to yourself, please?

6 A I've read it.

7 Q Now when you reviewed that, that portion of Exhibit
8 1 in December 1991, you thought that the engineer being
9 referred to there was Raystay's engineer, didn't you?

10 A I thought it was the site engineer, yes, that we had
11 employed.

12 Q When, when you say the site engineer you mean whom?

13 A Well, we had employed an engineer to find the site
14 for us. And I thought that's who was meant by that.

15 Q And you were referring to the person whom Raystay
16 retained to find a site prior to the original application for
17 construction permit being filed?

18 A That's correct.

19 Q And, and those applications were filed in March of
20 1989.

21 A Yes.

22 Q Right? So you thought that this sentence in Exhibit
23 1 was referring to a visit by an engineer made in March of
24 1989 almost 3 years earlier.

25 A That's what I thought, yes.

1 Q Now you knew of no visit to these sites by an
2 engineer after the construction permits had been issued, did
3 you?

4 A I didn't have any knowledge of any, no.

5 Q And with respect to the "representative of Raystay"
6 referred to in that sentence, who did you think that person
7 was?

8 A David Gardner.

9 Q And why did you think that it was David Gardner?

10 A Because David Gardner was assigned that task. And
11 he had prepared the exhibit.

12 Q Now he never told you that he had visited these
13 sites, had he?

14 A Oh, I wouldn't want to say that he had never told
15 me. I can't recall the exact time when he did visit it. But
16 I think I knew that he had visited the sites, yes.

17 Q And was that in connection with again the
18 preparation of the applications in about March 1989?

19 A Yes.

20 Q So you, so you thought that that entire sentence,
21 everything in that sentence was referring to the period of
22 about March 1989.

23 A That's correct.

24 Q Now why did you think the FCC was interested to know
25 in this application about activities undertaken by Raystay

1 before it even filed applications for the original
2 construction permits?

3 MR. SCHAUBLE: Objection, Your Honor. Counsel is
4 asking witness to say why he thought the FCC was interested in
5 something? That's not a --

6 JUDGE CHACHKIN: Well --

7 MR. SCHAUBLE: -- proper question.

8 JUDGE CHACHKIN: I'll sustain the objection.

9 BY MR. EMMONS:

10 Q You approved that, that sentence that we're focusing
11 on in Exhibit 1 with the understanding, your understanding
12 that it was confirmed in March 1989. Did you --

13 A Yes, I, I saw nothing wrong with the statement. I
14 misinterpreted it I have discovered later. But I -- at the
15 time, I saw nothing wrong with it.

16 Q Now did you know what determinations had been made
17 by the representative of Raystay and the engineer that it
18 referred to? That is to say determinations regarding site
19 preparation work and modifications?

20 A No, I didn't have that information.

21 Q Did anybody discuss that with you?

22 A As I say, I knew that David Gardner had obtained
23 these sites along with the site engineer and had made the
24 original representation in the application. And I don't
25 recall exactly how I knew that. But it was probably conveyed

1 to me by him. I did not visit the site myself.

2 Q So you didn't know what was being referred to when
3 this sentence referred to site preparation work and
4 modifications.

5 A No, in order to have a viable site, we've engaged
6 people that are skilled in finding the proper location. And
7 that's what we did here. And I presume that this was a site
8 that we could use.

9 Q Well, you didn't ask anybody when you were reviewing
10 this Exhibit 1 as to exactly what determinations anybody had
11 made concerning site preparation work or modifications?

12 A No, as I say I saw nothing wrong with this
13 statement. Because it seemed consistent with what we had done
14 before. There had been no work done at any of the sites,
15 because we hadn't been able to put a viable business plan
16 together.

17 Q Now with respect to the sentence on page 3 of TBF
18 Exhibit 245 that begins the second line from the bottom of the
19 page carrying over to page 4, would you read that to yourself
20 referring to negotiations with local cable television
21 franchises?

22 A Yes, I've read it.

23 Q Now Mr. Etsell was the person that you understood
24 was the, talking to the cable operators, was he not?

25 A Mr. Etsell put the business plan together and

1 started the negotiations with the cable operators. He had a
2 lot of opportunity to do this, because at the time I believe
3 he was an officer in a Pennsylvania cable television
4 association and a member of their board of directors. And
5 many of these people would attend meetings that he was at.

6 I attended meetings occasionally where they were at.
7 So did David Gardner. And when I attended the meetings, I
8 would talk with the people that I saw there about this. And
9 it was conveyed to me by Harold Etsell that that's what he was
10 doing.

11 Q Well, now did you consider in, in December 1991 when
12 you approved this Exhibit that you personally were engaged in
13 negotiations with local cable television franchises to
14 ascertain what type of programming would enable the station to
15 be carried on local cable systems?

16 A I discussed with them some of the problems that we
17 were having with the concept and tried to assure them that we
18 were trying to resolve it. Mr. Etsell and I had had several
19 meetings trying to determine what we could do to make the
20 various concepts that they had come together. And it was a
21 continuing effort. It wasn't something we oversaw.

22 Q Would you turn to Glendale Exhibit 208 please? Page
23 5. This is your direct written testimony.

24 MR. SCHAUBLE: Excuse me. It's in the orange
25 volume.

1 MR. GARDNER: This?

2 MR. EMMONS: -- orange volume.

3 MR. GARDNER: Oh, I'm sorry.

4 MR. SCHAUBLE: Page 5?

5 MR. EMMONS: Page 5.

6 MR. GARDNER: I have page 5.

7 BY MR. EMMONS:

8 Q And would you look at the sentence that begins on
9 the second to last line of the page and carries over to page 6
10 and read that to yourself, please.

11 A Yes.

12 Q Now that sentence refers only to Mr. Etsell's
13 discussions with cable television systems, does it not?

14 A That's what this statement says there, yes.

15 Q And you made no reference in your direct written
16 testimony to discussions that you had with cable television
17 systems to learn what type of programming would be, that will
18 persuade the systems to carry the LPTV stations.

19 A Well, let me read and see if it's ahead of it
20 rather.

21 (Pause.)

22 A I don't see a statement where I said that I had any
23 discussions with them, no.

24 Q Now at the time in December 1991 when you approved
25 and signed these applications, did you know when Mr. Etsell

1 had last had such discussions or negotiations with the cable
2 operators?

3 A No.

4 Q Now would you look on TBF Exhibit 245 again, page 3.

5 A Yes, I have it.

6 Q And at the sentence that is the second sentence of
7 the bottom paragraph referring to discussions with program
8 suppliers.

9 A Yes.

10 Q Now you personally had such discussions with the
11 Video Jukebox, Jukebox Network, did you not?

12 A Yes, I did.

13 Q And those are referred to in your direct written
14 testimony, Glendale Exhibit 308.

15 MR. SCHAUBLE: 208.

16 MR. EMMONS: I'm sorry, 208. Thank you.

17 BY MR. EMMONS:

18 Q On, starting on page 5. In, in the -- just below
19 the middle of the page of the, the bottom paragraph. Do you
20 see that?

21 A Yes, I see that.

22 Q And the only discussions referred to in that
23 paragraph, am I correct, that you had, that you personally had
24 with the program suppliers were discussions with Video Jukebox
25 Network, Video Jukebox Network.

1 A I believe I had discussions with other program
2 suppliers. Last night I happened to recall the name of one of
3 them. It was RFD, and they had their logo on a rural mailbox.
4 I don't recall what type of programming it was. But I do
5 recall that. That just occurred to me last night.

6 I remember at the LPTV convention in Las Vegas, I
7 believe it was in the fall of 1990, that I worked the floor to
8 find out what programmers might be interested in working with
9 us. But I don't recall the names of any of them.

10 Q And in fact as reflected in your direct testimony
11 the, your discussions with Video Jukebox Network took place or
12 at least began at the, in the fall of 1990 at that convention.

13 A Yes, that's correct.

14 Q And that was -- that convention was in Las Vegas?

15 A Yes.

16 Q And, and those discussions with Video Jukebox
17 Network ended, did they not, in around May or June of 1991?

18 A I don't recall exactly when it ended. Video Jukebox
19 had a concept that made sense, but the cost of implementing it
20 was too high. And I finally abandoned the concept, because we
21 just didn't feel that we could afford it.

22 Q The problem was that you would have had to purchase
23 equipment that would have to be installed at your low-power
24 station?

25 A Yes, it was very expensive equipment.

1 Q All right. And do you recall that your discussions
2 with Video Jukebox essentially ended in May or June of 1991
3 when you had a discussion with them at the cable convention
4 but not thereafter?

5 A Well, as I say, I don't recall when they ended. I
6 recall discussing it with them at the LPTV convention in Las
7 Vegas. And I make a statement here that I continued it at a
8 cable convention in '91. But when it ended I don't recall.

9 Q Well, you don't remember any discussions with Video
10 Jukebox after that cable convention that you referred to in
11 May or June of 1991.

12 A I don't recall, no.

13 Q Now you refer in your direct written testimony on
14 page 5 of Glendale Exhibit 208, you say, "I also recall" --
15 I'm sorry. "I also recall that David Gardner and Harold
16 Etsell, Jr. had also discussed programming and program
17 suppliers." And my question to you is do you know when any
18 such discussions by David Gardner or Mr. Etsell with program
19 suppliers took place?

20 A I don't recall.

21 Q And it is the case, is it not, that at no time in
22 which Raystay held these construction permits for these low-
23 power stations did you find programming that in your view
24 would make a plan, a business plan -- viable?

25 A That's correct.

1 Q And it's true, is it not, that unless you found
2 programming that you considered would make the stations viable
3 you weren't going to build stations.

4 A My experience with TV40 absolutely got in my way of
5 doing anything without having a viable business plan. I had
6 learned my lesson there. And there was no way that I was
7 going to go ahead. I was urged by I believe Mr. Etsell to go
8 ahead with them without having everything in place. But I
9 resisted that.

10 Q Now would you turn -- I guess you have it before
11 you, TBF Exhibit 245, page 3 still. In the third paragraph,
12 second sentence, "Raystay, however, has had discussions with
13 equipment suppliers concerning the type, concerning the types
14 and prices of equipment that could be used at the site
15 specified in the construction permits." My question to you is
16 you were the only one, were you not, who was having
17 discussions with equipment suppliers on behalf of Raystay with
18 respect to possible equipment for the new low-power stations.

19 A No, I think in David Gardner's deposition he states
20 that he had discussions also.

21 Q Well, at the time when you signed these applications
22 in December 1991, you didn't know about any discussions David
23 Gardner might have had with equipment suppliers, did you?

24 A Oh, it's possible I knew about it, yes.

25 Q But your present knowledge comes from your having

1 read David Gardner's deposition?

2 A That's correct.

3 Q Now do you remember David Gardner ever telling you
4 that he was in discussions with equipment suppliers prior to
5 your reviewing and approving Exhibit 1?

6 A I don't remember it, no.

7 Q Now your own -- you, you were the one with the
8 engineering know-how in the company though, weren't you?

9 A Well, generally the equipment was my responsibility,
10 yeah.

11 Q And your discussions with equipment suppliers that
12 you referred to in your direct testimony, those occurred
13 primarily in the fall of 1990, did they not? While Mr. Etsell
14 was working on a business plan.

15 A I think they started before that. I, I believe they
16 started in the fall of '89 at an LPTV convention. And I
17 followed up with it at the LPTV convention in 1990, the fall
18 of 1990. And then I had continuing interplay with not only
19 the main manufacturer I was interested in but also another one
20 who kept in contact with me on it.

21 I did investigate several different types of
22 manufacturers of transmitter equipment and narrowed it down.
23 I investigated the remote control equipment. Because this was
24 going to be, all be run by remote control, and we needed to
25 have a good system in place for that.

1 I kept myself informed generally on what was needed
2 as far as the equipment so that if we managed to put a
3 business plan together I'd be ready to go with the equipment
4 proposal.

5 Q Now Mr. Gardner, would you turn to page 2 of TBF
6 Exhibit 245. Do you have that?

7 A Page 2?

8 Q Yes. This -- page 2 of the exhibit is actually the
9 first page of the FCC Form 307 application.

10 A Yes, I have it.

11 Q And do you see about midway down the page question
12 7A?

13 A Yes.

14 Q And do you see that that question calls for the
15 application to state the reasons why construction has not been
16 completed?

17 A Yes.

18 Q And you read that question when you reviewed Exhibit
19 1.

20 A Yes.

21 Q Now would you tell us where in Exhibit 1 there is a
22 statement of the reason why construction had not been
23 completed?

24 A The business plan is fairly well laid out here. It
25 says it has continuing negotiations with the local cable

1 television franchises to ascertain what type of programming
2 would enable the station to be carried on a local cable
3 system. That was the key to making the business plan work
4 that we were, we had in place.

5 Q Well, did you tell the Commission in Exhibit 1 that
6 the reason Raystay hadn't started construction was that you
7 hadn't come up with a viable business plan?

8 (Pause.)

9 A I look at the fourth paragraph on Exhibit 1 as that
10 reason, although it doesn't specifically state the reason
11 construction has not been completed is. But that is the
12 reason in that paragraph.

13 Q But it doesn't say that, does it?

14 A It doesn't say those words, no.

15 Q And it doesn't say that you had not, you had not
16 been able to determine that you could acquire programming that
17 you considered would make the system viable, does it?

18 A Well, I, I guess we get down to the place where how
19 much of our continuing problem with creating a viable business
20 plan should be in this Exhibit 1. And the, the fact that we
21 didn't say that construction has not been completed because a
22 viable business plan hasn't been in place is missing.

23 Q Well, did you think when you signed this application
24 and, and adopted Exhibit 1 as your representation to the
25 Commission, did you think that you were telling the Commission

1 that the reason you hadn't started construction was because
2 you hadn't developed a viable business plan?

3 A I think that's what this says right here. That's
4 the way I read it. Someone else might not, not knowing as
5 much as I know about it wouldn't read that. And it's quite
6 possible I'm just too familiar with what was going on.

7 Q Do you know whether your attorneys knew that you had
8 not developed a viable business plan?

9 A I didn't talk directly with them. But David Gardner
10 knew it. And certainly I would assume that he would have
11 mentioned that.

12 Q Now when you had in your mind the concept that you
13 didn't yet have a viable business plan, what you, what you
14 meant in your own mind was that you didn't have a plan that
15 would, that would make operation --

16 A It had to show a break even point at some reasonable
17 term. That's what I consider --

18 Q Right.

19 A -- a viable business plan. If I can get one that
20 will break even on a projected 3-year basis, I'll probably go
21 with it.

22 Q And that was a, essentially a financial or an
23 economic decision that, that you made at the time that you
24 hadn't reached that point yet.

25 A That's correct.

1 Q Now did you tell the Commission that in this
2 application that you were making an economic or a financial
3 decision that at this point you didn't see your way clear to
4 starting this operation?

5 MR. SCHAUBLE: Objection, Your Honor.

6 JUDGE CHACHKIN: Well, the document says what it
7 says, counsel. All right.

8 MR. EMMONS: Had you -- at the time that you, you
9 filed this application, had you ever heard or was it your
10 understanding that as far as the FCC is concerned an
11 applicant's private financial decision is not a public
12 interest criterion?

13 MR. SCHAUBLE: Objection, Your Honor. Asking the
14 witness to -- sounds like a legal question.

15 MR. EMMONS: I'm asking him his state of mind as to
16 what, if anything, he understood the FCC policy was.

17 JUDGE CHACHKIN: I'll overrule the objection.

18 BY MR. EMMONS:

19 Q You have the question, Mr. Gardner?

20 A No.

21 Q You like me to repeat it?

22 A Oh, I'm sorry. You want me to answer the question.

23 Q Yes. I'll repeat it if you --

24 A If you would, yes. I --

25 Q My question is at the time that you signed these

1 applications in December 1991, had you ever heard or was it
2 your understanding that as far as the FCC is concerned an
3 applicant's private financial decision is not a public
4 interest criterion?

5 A Well, I can answer the question by saying I wasn't
6 aware that that was an FCC policy. Obviously, I look at a
7 situation from a business standpoint. If I can't see a way to
8 make the payroll, then I can't see how to stay in business.
9 So this was pretty clear to me that I couldn't go through with
10 it. I was having enough difficulty with TV40 that I certainly
11 couldn't take on any additional burden.

12 Q Now Mr., Mr. Gardner, Glendale Exhibit 208 which is
13 your direct testimony, page 6, in the first full paragraph,
14 third sentence, "It did not cross my mind to insert additional
15 facts into the exhibit." Do you see that?

16 A Yes.

17 Q Didn't it cross your mind at the time that you were
18 reviewing Exhibit 1 to insert the fact that you had no idea
19 when construction of these stations would begin?

20 A I had no idea. I needed a viable business plan.

21 Q Well, did it not cross your mind to tell that to the
22 Commission in this application?

23 A I thought I was stating what we had done there. If
24 there's omissions, I thought that everything that was required
25 was in there, because Mr. Cohen and David had prepared this.